Supreme Court of the United States.

Nos. 370 and 594.—October Term, 1905.

Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and The Greensboro Ice and Coal Company, Appellants, vs. Southern Railway Company.	Appeal from the Circuit Court of the United States for the Eastern District of North Carolina.
Southern Railway Company, Appellant, vs. Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and The Greensboro Ice and Coal Company.	Cross appeal from the Circuit Court of the United States for the Eastern District of North Carolina.

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[May 28, 1906.]

The Southern Railway Company, a corporation organized under the laws of the State of Virginia, operates among others a line of railway passing through Greensboro, North Carolina. At that place the Greensboro Ice and Coal Company, during the times hereafter mentioned, had a coal and wood yard, located some distance from the main track and right of way of the railroad. From this main track, however, there was a private siding or spur track extending across the land of private persons to the establishment of the ice and coal company. In consequence of the views expressed in the opinion it is unnecessary to review the facts as to the construction of this spur track or to detail the course of dealing between the parties concerning it prior to the origin of this controversy. Certain it is that at one time the railroad delivered cars consigned to the ice and coal company from its main track on to the spur track in question. A dispute arose between the railway company and the ice and coal company concerning demurrage on thirteen cars containing coal and wood consigned to the latter company. In consequence of the refusal of the ice and coal company to pay these charges the railway, on October 12, 1903, notified the ice and coal company that after October 17, 1903, it would only deliver cars consigned to the ice and coal company on the public tracks of the railway company at a place known as the team track, set aside for the delivery to the public generally of merchandise of that character. After receiving this notice the ice and coal company ordered four cars of coal from points in the States of Pennsylvania, West Virginia and Tennessee. These cars reached Greensboro between October 18, 1903,

and October 22, 1903, were placed upon the team track, and delivery was tendered to the ice and coal company. That company, however, declined to receive or unload the cars elsewhere than on the siding above referred to. An informal complaint on the subject was made by letter on October 20, 1903, to the North Carolina Corporation Commission, composed of the appellants Franklin McNeill, Samuel L. Rogers and Eugene C. Bedding-field. After conversations had with officers of the railway company, the commission, on October 31, 1903, made an order requiring the railway company, upon payment of freight charges, to make delivery of the cars beyond its right of way and on the siding referred to. Hearing was had on exceptions filed on behalf of the railway company, and on December 10, 1903, the commission made an order overruling the exceptions. The railway company appealed to the Circuit Court of Guilford County.

In the meantime, on November 2, 1905, after demurrage or car service charges had attached in respect to the four cars of coal, and to prevent unnecessary interference with its other business, the railway company removed the cars in question from the team track and placed them on a distant siding.

By chapter 164 of the Public Laws of North Carolina for 1899, creating the corporation commission, and by the acts amendatory thereof, as contained in chapter 20, revisal of 1905, as amended in 1905, it was provided as follows:

"1086. For violating rules.—If any railroad company doing business in this State by its agents or employes shall be guilty of a violation of the rules and regulations provided and prescribed by the commission, and if after due notice of such violation given to the principal officers thereof, if residing in the State, or, if not, to the manager or superintendent or secretary or treasurer if residing in the State, or if not, then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation as may be directed by the commission, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offense of five hundred dollars. (1899, c. 164, s. 15.)

"1087. Refusing to obey orders of commission.—Any railroad or other corporation which violates any of the provisions of this chapter or refuses to conform to or obey any rule, order or regulation of the corporation commission shall, in addition to the other penalties prescribed in this chapter, forfeit and pay the sum of five hundred dollars for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the corporation commission; and each day such company continues to violate any provision of this chapter, or continues to refuse to obey or perform any rule, order or regulation prescribed by the corporation commission shall be a separate offense. (1899, c. 164, s. 23.)

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"1091. Violation of rules, causing injury; damages; limitation.—If any railroad company doing business in this State shall, in violation of any rule

or regulation provided by the commission, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in an action between individuals, except that in case of willful violation of law such railroad company shall be liable to exemplary damages: Provided, that all suits under this chapter shall be brought within one year after the commission of the alleged wrong or injury. (1899, c. 164, s. 16.)"

On January 5, 1904, the bill in this case was filed in the Circuit Court of the United States for the Eastern District of North Carolina to perpetually enjoin the bringing of actions by the ice and coal company and by the commission to recover penalties or damages under the authority of the aforesaid statutory provisions, because of the noncompliance of the railway company with the order of the commission. As grounds for the relief prayed it was averred that the railway company had a common defense based upon the commerce clause of the Constitution of the United States, the provisions of the act of Congress to regulate commerce and the due process clause of the Constitution, and also because the corporation commission was an illegal body, as it was empowered to exercise judicial, executive and legislative functions contrary to the Constitutions of the State and of the United States. After the filing of answers the cause was referred to a master to report the testimony and findings of fact to the court. The court, concluding that the order of the corporation commission was repugnant to the commerce clause of the Constitution, entered a decree in favor of the railway company and perpetually enjoined the enforcement of the order of the corporation commission and the bringing of actions to recover penalties or damages for a violation of that order. (134 Fed. Rep. 82.) The corporation commission and the ice and coal company appealed and the railway company prosecuted a cross appeal upon the ground that the court below erred in not deciding that the corporation commission was an unconstitutional body because of the alleged mixed and peculiar character of the functions conferred upon it by the State statutes.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The legal principle which controls the determination of this cause renders it unnecessary to state many of the facts contained in this voluminous record or to consider and pass upon a number of the legal propositions urged in the cause. But three questions are essential to be passed upon. They are, First. Whether the record discloses that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars. Second. Whether, as to the individual defendants below, this cause in fact was a suit against the State of North Carolina. Third.

Whether the order and decision of the corporation commission of North Carolina and the statutes of that State upon which the same was based were void because in conflict with the commerce clause of the Constitution and the act of Congress to regulate commerce.

1. It was urged in argument on behalf of the commission and the ice and coal company that the extra cost or expense, if any, of placing the four cars of coal on the siding was the matter in controversy. In the court below it would seem to have been claimed that the one hundred and forty-six dollars demurrage was the question at issue. However this may be, as said by the trial court, although the demurrage dispute may have been the origin of the litigation, there is involved in the controversy presented by the bill not only the right to enforce against the railway company the payment of statutory penalties much in excess of two thousand dollars, but also the right of that company to carry on interstate commerce in North Carolina without becoming subject to such orders and directions of the corporation commission which so directly burdened such commerce as to amount to a regulation thereof. This latter right is alleged in the bill to be of the necessary jurisdictional value, the averment was supported by testimony, and the master and the court below have found such to be the fact. There is no merit in the contention that there is a want of jurisdiction to entertain the writ of error.

2. We think the real object of the bill may properly be said to have been the restraining of illegal interferences with the property and interstate business of the railway company, the asserted right to interfere, which it was the object of the bill to enjoin, being based upon the assumed authority of a State statute, which the bill alleged to be in violation of rights of the railway company protected by the Constitution of the United States. In this aspect the suit was not in any proper sense one against the State. (*Scott* v. *Donald*, 165 U. S. 107, 112; *Fitts* v. *McGhee*, 172 U. S. 529, 530.)

3. The cars of coal not having been delivered to the consignee, but remaining on the tracks of the railway company in the condition in which they had been originally brought into North Carolina from points outside of that State, it follows that the interstate transportation of the property had not been completed when the corporation commission made the order complained of. (*Rhodes* v. *Iowa*, 170 U. S. 412.)

By section 1066 of the revisal of 1905 the general powers of the North Carolina corporation commission were thus defined:

"1066. General powers.—The corporation commission shall have such general control and supervision of all railroad, street railway, steamboat, canal, express and sleeping car companies or corporations and of all other companies or corporations engaged in the carrying of freight or passengers, of all telegraph and telephone companies, of all public and private banks

and all loan and trust companies or corporations, and of all building and loan associations or companies, necessary to carry into effect the provisions of this chapter and the laws regulating such companies. (1899, c. 164; 1901, c. 679.)"

By section 1100 it was provided as follows:

"1100. Demurrage; storage; placing and loading of cars.—The commission shall make rules, regulations and rates governing demurrage and storage charges by railroad companies and other transportation companies; and shall make rules governing railrood companies in the placing of cars for loading and unloading and in fixing time limit for delivery of freights after the same have been received by the transportation companies for shipment. (1903, c. 342.)"

Under these circumstances it is undoubted that by a circular, numbered 36 and dated July 9, 1903, the corporation commission promulgated rules fully regulating the right of railway companies to exact and the amount of charges which might be made for storage, demurrage, etc. And the pleadings make it clear that the order of the corporation commission complained of was not made upon the assumption of any supposed contract right which the corporation commission as a judicial tribunal was enforcing as between the ice and coal company and the railway company, but was exclusively rested upon the general administrative authority which the corporation commission deemed it had power to exercise in virtue of the rights delegated to it by the statutes of North Carolina as above stated. Thus, in paragraph 12 of the answer the corporation commission averred as follows:

"These defendants are advised that the orders made by them, hereinbefore referred to, do not constitute an interference with interstate commerce as alleged in said paragraph 12 (referring to bill of complaint); nor with the right of the complainant to conduct its business according to its reasonable rules and regulations, except so far as the corporation commission has the right and power to control its rules and regulations by virtue of said act creating the corporation commission, and the amendment thereto, contained in chapter 342, Public Laws, 1903, whereby the power is expressly conferred upon the North Carolina Corporation Commission, by subsection 26, 'to make rules governing railroad companies in the placing of cars for loading and unloading, and in fixing time limit for the delivery of freights after the same have been received by the transportation companies for shipment.' And these defendants further say that, having full power to provide for placing cars for unloading, and in conformity with the rules of the said North Carolina Corporation Commission, the orders complained of in the bill were in strict conformity to the law, and finally adjudged and made after the complainant company had full opportunity to make defense as to its alleged rights in the premises."

Without at all questioning the right of the State of North Carolina in the exercise of its police authority to confer upon an administrative agency the power to make many reasonable regulations concerning the place,

manner and time of delivery of merchandise moving in the channels of interstate commerce, it is certain that any regulation of such subject made by the State or under its authority which directly burdens interstate commerce is a regulation of such commerce and repugnant to the Constitution of the United States. (*Houston & Texas Central Ry. Co.* v. *Mayes*, 201 U. S. 321; *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500.)

Not being called upon to do so, we do not pass upon all the general regulations formulated by the commission on the subject stated, but are clearly of opinion that the court below rightly held that the particular application of those regulations with which we are here concerned was a direct burden upon interstate commerce and void. Viewing the order which is under consideration in this case as an assertion by the corporation commission of its general power to direct carriers engaged in interstate commerce to deliver all cars containing such commerce beyond their right of way and to a private siding, the order manifestly imposed a burden so direct and so onerous as to leave no room for question that it was a regulation of interstate commerce. On the other hand, treating the order as but the assertion of the power of the corporation commission to so direct in a particular case, in favor of a given person or corporation, the order not only was in its very nature a direct burden and regulation of interstate commerce, but also asserted a power concerning a subject directly covered by the act of Congress to regulate commerce and the amendments to that act, which forbid and provide remedies to prevent unjust discriminations and the subjecting to undue disadvantages by carriers engaged in interstate commerce.

The direct burden and resulting regulation of interstate commerce operated by an alleged assertion of State authority similar in character to the one here involved was passed upon by the Circuit Court of Appeals for the Sixth Circuit in *Central Stock Yards Co.* v. *Louisville & Nashville R. R. Co.*, (118 Fed. Rep. 113.) The court in that case was called upon to determine whether certain laws of Kentucky imposed a direct burden upon interstate commerce and were a regulation of such commerce, upon the assumption that those laws compelled a common carrier engaged in interstate commerce transportation to deliver cars of live stock moving in the channels of interstate commerce at a particular place beyond its own line different from the general place of delivery established by the railway company. In pointing out that if the legislation in question was entitled to the construction claimed for it, it would amount to a State regulation of interstate commerce, it was aptly and tersely said (p. 120):

"It is thoroughly well settled that a State may not regulate interstate commerce, using the terms in the sense of intercourse and the interchange of traffic between the States. In the case at bar we think the relief sought pertains to the transportation and delivery of interstate freight. It is not

the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky constitution could be given any such construction, it would follow it could regulate interstate commerce. This it cannot do."

As we conclude that the court below rightly decreed that the order complained of was invalid because amounting to an unlawful interference with interstate commerce, we deem it unnecessary to consider the contentions made on the cross appeal of the railway company. And because we confine our decision to the issue which necessarily arises we do not intimate any opinion upon the question pressed at bar as to whether an order which was solely applicable to purely State business, directing a carrier to deliver property upon a private track beyond the line of the railway company, would be repugnant to the due process clause of the Constitution.

The final decree which the Circuit Court entered and the writ of perpetual injunction issued thereon were, however, much broader than the necessities of the case required, and should be limited so as to adjudge the invalidity of the order complained of, restrain the institution by the defendant of suits or actions for the recovery of penalties or damages founded upon the disobedience of such order, and forbid future interferences under like circumstances and conditions with the interstate commerce business of the railway company. As so modified, the decree below is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.